

REMARKS

Claims 1-37 are pending in the application.

Claims 1-15 and 20-33 have been rejected.

Claims 16-19 and 34-37 have been canceled.

Reconsideration of the Claims is respectfully requested.

I. **SPECIFICATION**

Applicant has amended the specification to insert the application serial numbers of the related applications. Applicant believes that the reference to FIG. 9 on page 7 is correct.

II. **INFORMATION DISCLOSURE STATEMENT (IDS)**

The Office Action requests that the IDS filed on March 17, 2000 be resubmitted. Applicant has reviewed its file and it does not appear that an IDS was filed on March 17, 2000. If this is incorrect, Applicant respectfully requests that the Examiner contact the undersigned counsel for clarification purposes.

III. **DRAWINGS**

The Office Action objects to FIGURE 1 (item 100), FIGURE 5 (item 500), FIGURE 7 (items 800, 840, 880) and FIGURE 9 (items 900) as requiring "descriptive wording," citing 37 CFR 1.83(a). These objections are respectfully traversed. The Specification includes descriptive wording for item 100 (page 4, line 16); item 500 (page 6, line 8); items 800, 840, and 880 (page 7, lines 6-9); and item 900 (page 7, line 27-29). Accordingly, Applicant requests withdrawal of the objection to the Figures.

IV. **CLAIM OBJECTIONS**

Claims 1-15 and 20-33 have been objected to as set forth in the Office Action. Applicant has not amended the Claims because Applicant fails to understand the basis for objection(s). Moreover, Applicant's Specification describes "a distributed PBX topology, thereby providing an enhanced Quality of Service (QoS) for the network" (Page 1, lines 14-15 and Abstract) and that "PBX 110 is a network . . ." (Page 4, line 19). In addition, Applicant's Specification describes and uses the term "bandwidth" or "bandwidth optimization" in numerous instances (Page 1, lines 22, 24, 25 and 27; Page 8, line 4; Page 10, lines 3 and 13; Page 12, lines 15; Page 13, lines 4, 16, 18 and 22; Page 19, line 6, etc.).

V. REJECTION UNDER 35 U.S.C. § 102

Claims 1-2, 4-5, 20 and 22-23 were rejected under 35 U.S.C. § 102(e) as being anticipated by Cruickshank (US 6,389,005). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Applicant's invention, as claimed in independent Claims 1, 2 and 20 (and dependent Claims 4-5 and 22-23) are methods and apparatus that dynamically adapt a PBX network to maintain a Quality of Service (QoS) level in the network. Cruickshank does not appear to adapt the PBX

network in order to maintain a QoS in the network, but describes the rerouting of a call over a second connection when the QoS of the network “falls below a specified threshold.” Moreover, Applicant’s claims recite enabling optimization (optimization mechanism, optimization enabling device) of the network bandwidth (adjusting or optimizing the bandwidth of the network) when a measured parameter (of a data packet transported across the network or a value associated with a given packet) differs from a predetermined value.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(e) rejection of Claims 1-2, 4-5, 20 and 22-23.

VI. REJECTIONS UNDER 35 U.S.C. § 103

Claims 3, 6-8, 21 and 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cruickshank (US 6,389,005) as applied to claims 1 or 21, and further in view of Chang, et al. (US 2003/0091028). Claims 9-15 and 27-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cruickshank (US 6,389,005) in view of Chang, et al. (US 2003/0091028) and further in view of Geagan, III et al. (US 6,363,371). The rejections are respectfully traversed.

The main reference that forms the basis of all 103 rejections is United States Patent No. 6,389,005 to Cruickshank.

Section 103(c) provides:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, United States Code, § 103(c). See also, MPEP § 2146.

The present application is owned by Nortel Networks Limited, as evidenced by documents recorded at Reel 010612, Frame 0692 (assignment from inventor to Nortel Networks Corporation) and Reel 011195, Frame 0706 (name change document changing name from Nortel Networks Corporation to Nortel Networks Limited). The cited reference, US 6,389,005, is also owned by Nortel Networks Limited. Therefore, the present application and the cited reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

Accordingly, the Cruickshank reference is unavailable as prior art under section 103 and the Office Action fails to establish a *prima facie* case of obviousness. Applicant respectfully requests withdrawal of the § 103(a) rejections of Claims 3, 6-15, 21 and 24-33.

VII. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at rmccutcheon@davismunck.com.

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The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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